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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/522,632	01/24/2005	Andrea Calvi	007511.00014	7405
22507	7590	04/12/2010		
BANNER & WITCOFF, LTD. 1100 13th STREET, N.W. SUITE 1200 WASHINGTON, DC 20005-4051			EXAMINER	
			BENOIT, ESTHER	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/522,632	<b>Applicant(s)</b> CALVI ET AL.
	<b>Examiner</b> ESTHER BENOIT	<b>Art Unit</b> 2442

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 22 December 2009.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1-7,9,10,12-21,23 and 32-39 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-7,9,10,12-21,23 and 32-39 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

## DETAILED ACTION

### ***Response to Amendments***

1. This Action is in response to an Amendment filed December 22, 2009. Claims 1, 3, 5, 9, 13-14, 16-17, 19-21, 32, and 37 have been amended. Claims 1-7, 9-10, 12-21, 23 and 32-39 are pending in this application.

### ***Response to Arguments***

2. Applicant's arguments, see Remarks, filed 12/22/2009, have been fully considered. Some arguments were found persuasive and some were not. The rejection for the arguments that were found persuasive has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Takeda (US 2002/0055999 A1). The arguments that were not found persuasive have been addressed below:

#### **Arguments under 35 U.S.C. 103 (a)**

##### **Arguments to Claim 1:**

a) Raisanen 2003 does not disclose "reception of a trigger signal at a monitoring apparatus, from a remote entity" because the **measuring hosts** are not **different from** the **two network nodes** that are transmitting packets.

b) Raisanen 2003 does not store network data to a **remote network archive** associated with the remote network entity, wherein the remote network archive is different from a buffer of the monitoring apparatus.

***Response to arguments of Claim 1:***

As to point a: The argument has been considered, but is not persuasive. In paragraph [0057], Raisanen 2003 discloses there are certain conditions in the network that would cause an interrupt signal from the QOS manager to be sent to the measuring host to interrupt measurement on the nodes. This interrupt can be sent according to a measurement profile that is maintained by QOS manager in a database. The monitoring apparatus in Raisanen 2003 is the measuring host that is monitoring the transmission of packets between two access nodes (E and G) [0041]. The remote entity is the QOS manager that sends out an interrupt of measurement signal to the measuring host. In the reference Takeda, the monitoring apparatus is separate and distinct from the two nodes that are transmitting the data packets as can be seen in Figure 1 (*measuring probes are performing the monitoring functions ([0051] and [0056]) and blocks 21 and 23 are the nodes transmitting the packets*).

As to point b: The argument has been considered, but is not persuasive. The remote archive is the database storage associated with the QOS manager that maintains the data. The measuring hosts have their own memory storage.

As to any claims not specifically discussed, the applicants argued that it was patentable for one of the reasons discussed above. Please see response to above arguments for unspecified discussions.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-7, 9-10, 12-21, 23 and 32-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takeda (US 2002/0055999 A1), in view of Raisanen et al. (2003/0152028 A1), hereinafter Raisanen 2003.

**With respect to claim 1**, Takeda discloses:

- monitoring operation of an application by a monitoring apparatus through a network interface ([0051] and [0056], *measuring probe includes QOS processor that processes captured packet information*)
- monitoring the network interface for data packets ([0051] and [0056], *measuring probe includes QOS processor that processes captured packet information*)
- receiving, at the monitoring apparatus, a data packet associated with the operation of the application as the data packet is being transmitted between two network nodes, through the network interface, wherein the two network nodes are different from the monitoring apparatus (Figure 1,

*([0051] and [0056], measuring probe includes QOS processor that processes captured packet information)*

- filtering the received data packet ([0072], *feature extractor extracts features from received data packets to determine if an exception occurs packet depending on extracted data*)
- storing network data including the filtered data packet in a buffer of the monitoring apparatus, wherein the network data is indicative of a behavior of the network ([0105], *buffer storage controller stores feature data of packet depending on extracted data*)

Takeda does not explicitly disclose:

- receiving a trigger signal at the monitoring apparatus from a remote network entity in response to a critical situation corresponding to the quality of service of the application
- in response to receiving the trigger signal transmitting from the monitoring apparatus, the stored network data to a remote network archive

However, Raisanen 2003 discloses:

- receiving a trigger signal at the monitoring apparatus from a remote network entity in response to a critical situation corresponding to the quality of service of the application, wherein the remote network entity is

*different from the two network nodes ([0057], where interrupt is sent to measuring hosts from QOS manager to indicate an exception occurred)*

- in response to receiving the trigger signal transmitting from the monitoring apparatus, the stored network data to a remote network archive associated with the remote network entity, wherein the remote network archive is different from the buffer of the monitoring apparatus ([0056]-[0057], QOS database)

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Takeda with the teachings of Raisanen 2003 to receive a signal in response to a critical situation occurrence, because it will allow the network to know the status of its running applications.

**With respect to claims 13, 32, and 37,** the limitations of claims 13, 32, and 37 are similar to the limitations of claim 1 above. Therefore, the claims are rejected for the same reasons as claim 1 above.

**With respect to claims 2, 4-6, 12, 14, 16-17, 19, 21, 23, 33, 35-36, and 39,** the limitations of these dependent claims do not introduce any additional features not found in their independent claims 1, 13, 32, and 37. Therefore, the claims are rejected for the same reasons as their independent claims above.

**With respect to claims 3, 15, 34, and 38,** Takeda discloses measuring the quality of service based on the network data in synchronized fashion with at least one other monitoring apparatus ([0051] and [0056])

**With respect to claims 7 and 18**, Takeda discloses the activation function and said control function co-operate with each other according to an agent/server configuration, in which said activation function acts as an agent and said control function acts as a server ([0051] and [0056])

**With respect to claims 9 and 20**, Takeda discloses storing the network data includes storing data for a specified time window ([0051] and [0056])

**With respect to claim 10**, Takeda does not disclose at least one of the trigger signals and the data indicative of the behavior of the network is transmitted through a direct transmission channel.

However, Raisanen 2003 discloses at least one of the trigger signals and the data indicative of the behavior of the network is transmitted through a direct transmission channel ([0057], *where interrupt is sent to measuring hosts from QOS manager to indicate an exception occurred*)

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Takeda with the teachings of Raisanen 2003 to receive a signal in response to a critical situation occurrence, *because* it will allow the network to know the status of its running applications.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Esther Benoit whose telephone number is 571-270-3807. The examiner can normally be reached on Monday through Friday between 7:30 a.m and 5 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached on 571-272-4006. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

E.B.  
April 5, 2010

/Philip C Lee/  
Primary Examiner, Art Unit 2448